

*From the N. Albany
Appointee*

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THE
DUTIES AND POWERS
OF
PUBLIC OFFICERS
AND
PRIVATE PERSONS
WITH RESPECT TO
VIOLATIONS
OF
THE PUBLIC PEACE.

*said to be written
by Wm. Perival*

DUTIES AND POWERS

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THE
DUTIES AND POWERS
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ACTS which are deemed by the law injurious to the public peace, are either such as amount to an actual breach of it, or such as have a tendency thereto,—

Of the first are Assaults, Affrays, Unlawful Assemblies, Routs, Riots, all Felonies, and all Treasons—

Of the second are Misprisions of Felony and Treason, Libels, and Seditious Words.

Of Assaults and Affrays, which are matters of private quarrel, and such felonies as consist in the Invasion of private Property, it is no part of the Author's intention to treat, but to take the others in their order.

An Unlawful Assembly is where three persons or more assemble themselves together with an intent mutually to assist one another against any one who shall oppose them in the forcible execution of some enterprize of a *private* nature, to the manifest terror of the people, whether the

act intended were lawful or unlawful, and the assembly is unlawful, though the persons assembled depart of their own accord without doing any thing.

A Rout is where such assembly moves toward the execution of such act, though they do not effect it.

A Riot is where such assembly executes such act. 4 Burn's Justice, 87. from 1 Haw. 293. and Dalt. c. 136.

These three offences are misdemeanours at the common law, and their punishment is by *fine and imprisonment*.

By 13 Car. 2. c. 5. (which is still in force, Doug. 571.) to repair to his Majesty, or either or both Houses of Parliament, upon pretence of any petition, &c. accompanied at any one time with more than ten persons, is prohibited, under pain of incurring a penalty not exceeding the sum of 100*l.* and three months imprisonment for every offence.

By 1 Geo. 1. stat. 2. c. 5. where the Rioters amount to the number of twelve, or more, and continue together for the space of one hour after having been required by proclamation in the King's name, by the Sheriff, Under-Sheriff, or any Justice of the Peace, under the pains of the statute to disperse; or after such Magistrate has been wilfully prevented from making such proclamation, it is Felony, and the punishment is *Death*.

By the same statute, whoever wilfully obstructs such magistrate from making such proclamation, is likewise guilty of Felony, and to be punished with *Death*.

And by the same statute, if any Rioters forcibly demolish or pull down, or begin to demolish or pull down any Church or Chapel, or any Building for Religious Worship, certified and registered according to the Toleration Act, or any Dwelling-House, Barn, Stable, or other Out-House, they are Felons, and their punishment is *Death*.

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By the 9 G. 3. c. 29. the above-mentioned statute and its penalties are extended to Rioters who demolish, pull down, or begin to demolish or pull down, any Wind, Water, or other Mill, or any of the Works belonging to it.

It is observed in the above description of a Riot, that the enterprize intended to be executed, must be of a *private* nature; for where it is to redress *Public* Grievances, to pull down all Inclosures in general, to reform Religion, to remove evil Counsellors from the King, to force the (Doug. 570.) repeal of a Law, or for the expulsion of Foreigners in general, or of any single nation, living here under the protection of the King (Fost. 211.) or to effect any such object of the like general and public nature; if the Rioters attempt with force to execute such their intentions, they are in the Eye of the Law guilty of levying War against the King; and all levying War against the King in his Realm, is High Treason. 1 Haw. c. 17. § 25. 1 Haw. c. 65. § 6. 25 Ed. 3. c. 2. Fost. Cr. Law. 211.

To compass or imagine the Death of the King, Queen, or their Eldest Son and Heir-Apparent, is High Treason, 25 Ed. 3. c. 2.

The compassing or imaging the King's Death, may be manifested not only by an overt act of direct Conspiracy to take away his Life, but by such as cannot be executed without the apparent peril thereof; as by writing Letters to a Foreign Power, inciting them to invade the Realm, or assembling Men together, in order to imprison or depose the King, or to compel him by force to yield to certain Demands, or to levy War against his Person. 1 Haw. c. 17. § 9.

It has been said that Words cannot amount to Treason, but this must be understood of loose Words, not relative to

to any Act or Design; for Words of Advice or Persuasion, to kill the King, or levy War against him; and all Consultations for such traitorous Purposes, are certainly High Treason. Foist. 200.

Adherence to the King's Enemies in his Realm, giving them Aid or Comfort within the Realm, or elsewhere, is High Treason. 25 Ed. 3. c. 2.

It is Treason likewise to slay the Chancellor, Treasurer, or King's Justices of the one Bench or the other, or Justices of Assize and Oyer and Terminer, in the execution of their Offices. 25 Ed. 3. c. 2.

To Assault, Wound, or attempt to Kill a Privy Counsellor in the execution of his Office, is Felony without Benefit of Clergy. 9 Ann. c. 16.

Foreigners who come into the Kingdom, may be guilty of Treason, though Subjects of a Foreign Prince. 1 Haw. c. 17. § 5.

In High Treason, all concerned are Principals, whether before the act by procuring it to be done, or after by comforting the Traitor (3 Inst. 138.); and the punishment is forfeiture of all Property, real and personal, corruption of Blood, and Death. 3 Inst. 211.

Misprision of Treason

Is the concealing of a Treason, and not revealing it in convenient time, by a person who knows of it, without consenting to it. 3 Inst. 36. 1 H. H. 371. 1 Haw. c. 20. § 2.

The punishment for Misprision of Treason, is Imprisonment for Life, forfeiture of all Goods for ever, and of the profits of his land during life. 3 Inst. 36.

Misprision

Misprision of Felony, is the concealment or procuring the concealment of Felony; silently to observe the commission of Felony, without any endeavour to apprehend the offender, is a Misprision, and punished by Fine and Imprisonment. 1 Haw. c. 59.

Hinderances in bringing Offenders to public Justice.

It is an offence of a very high nature to oppose one who lawfully endeavours to arrest another for treason or felony. Whoever knowing a person to have committed any such crime, receives and comforts him, and endeavours to aid him in making his escape, then become principal in the case of Treason, and an accessory in the act of Felony. 2 Haw. c. 17. Hale Sum. 218, 219.

A Libel

Is a malicious defamation of any person, expressed either in printing or writing, signs or pictures, ironically or directly, tending to expose him to public hatred, contempt, or ridicule, by blackening the reputation of himself or of others, whether alive or dead, (K. v. Topham, 4. T. R. 126.) with whom he is connected. 1 Haw. 352, 353.

A public Libel is such a defamation of the King, or his Government. K. v. Horn. Cowp. K. v. Woodfall, 5 Bur.

The punishment is Fine and Imprisonment, with or without Pillory, at discretion of the Judges.

Seditious Words.

All speaking contemptuously of the King, as by cursing him, &c. or giving out that he wants wisdom, valour,
or

or steadiness, or in general doing any thing which may lessen him in the esteem of his subjects, and weaken his government, or raise jealousies between him and his people.

1 Haw. c. 23. § 6.

Charging the Government with oppression and weak administration, doing an act which impliedly encourages rebellion, as drinking to the pious memory of a person executed for High Treason, charging the King with a breach of his Coronation Oath, are all contempts of the King and his Government, which are punishable as above, by Fine, Imprisonment, and Pillory. 1 Haw. c. 23. § 1. 2. 5.

Seditious Words in contempt of the established religion, are indictable as tending to a breach of the peace.

All blasphemies against God, as denying his being or providence, and all contumelious reproaches of Jesus Christ.

All profane scoffing at the Holy Scripture, or exposing any part thereof to contempt and ridicule—punishable with Fine and Imprisonment, and such corporeal infamous punishment as to the Court in discretion shall seem meet, according to the heinousness of the crime. 1 Haw. c. 5.

Having thus enumerated and described those offences against the public peace, which it is the interest of the whole Society to have suppressed, I proceed in the next place, to point out the manner in which the subjects of the country, in their respective situations, are either authorised or obliged by law to interfere in their suppression.

And first of Private Persons.

All persons whatsoever, who are present when a felony is committed, or dangerous wound given, are bound to apprehend the offender, on pain of being fined and imprisoned for their neglect, unless they are under age at the time. 2 Haw. c. 12. § 1.

Every

Every private person is also *bound* to assist an officer demanding his help for the taking of a felon, or suppressing an affray, or apprehending the affrayers. 2 Haw. c. 12.

§ 7. And to attend on *posse comitatus*, on pain of Fine and Imprisonment. Dalt. c. 171.

Any one *may lawfully* lay hold of another, whom he shall see on the point of committing a Treason or Felony, or doing any act which would manifestly endanger the life of another, and may detain him so long, till it may be reasonably presumed he has changed his purpose. 2 Haw. c. 12. § 19.

Any person whatsoever, if an affray be made to the breach of the King's Peace, may restrain any offenders, to the end that the King's Peace may be kept; but after the affray is ended, they cannot be arrested without an express warrant. 2 Inst. 52. And what the law requires or allows in case of an affray, it must also, with at least equal authority, hold with respect to more aggravated breaches of the peace, as Riots, &c.

From all which it appears clearly, that wherever there be an actual breach of the peace, every private person who sees the offence committed, is, in aggravated cases, *bound* by the law, and in all cases *permitted* to arrest the offender; and there seems as little doubt in the case of those offences which tend to a breach of the peace; for it has been adjudged (C. Car. 234. 1 Jon. 245. 2 R. Ab. 546.) that any one may apprehend a common notorious Cheat going about the country with false dice, and being actually caught playing with them; as the Public requires the discouragement of such offenders, and the restraining private persons from arresting them without a warrant from a magistrate, would often give them an opportunity for escaping. And from the reason of this case, it seems to follow

follow that the arrest of any other offenders, by private persons, for offences in like manner scandalous, and prejudicial to the public, may be justified. 2 Haw. c. 12. § 20.

Private persons may, but are not compellable to, execute the warrant of a Justice of Peace, when specially directed to them. 2 Haw. c. 12. § 21. 1 H. H. 581.

When a private person has made an arrest, he may detain his prisoner in custody till he can reasonably dismiss himself of him, but with as much speed as he conveniently can,

He may either carry him to the common gaol, which is now rarely done, or

He may deliver him to the Constable, or

He may carry him directly to a Justice of the Peace. 1 Burn. 109. from 1 H. H. 589. 2 H. H. 77.

“A private man, if he sees a person committing an unlawful act, more particularly an act amounting to a violent breach of the peace, Felony or Treason, may apprehend the offender, and in his attempt to apprehend him, may use force to compel him, not to submit to him, but to the law. What a private man may do, a magistrate or peace-officer may clearly undertake; and according to the necessity of the case, arising from the danger to be apprehended, any number of men assembled, or called together for the purpose, are justified to perform. This doctrine I take to be clear and indisputable, with all the possible consequences which can flow from it, and to be the true foundation for the calling in of the Military Power, to assist in quieting (the late) Riots.”

Extract from Ld. Mansfield's Speech in the House of Lords, upon the subject of the Riots in 1780.

Parliamentary Register, vol. xv. p. 380.

Arrests

Arrests by Public Officers,

May always be made where they would be justified, if made by a private person. 2 Haw. c. 13. § 1.

Therefore vide chap. above.

As far as the mere arrest goes, the authority of a constable does not seem to be greater than that of a private person, as he cannot justify an arrest for an offence done out of his view, unless by warrant (2 Haw. c. 13. § 6. & 7.), except in company with a private person who did see it. Upon complaint of a felony, he may conduct the offender to a house, gaol, or stocks, till he can be brought before a Justice of the Peace. H. P. C. 92.

But his authority is greater to demand the assistance of others (which we have seen above it is criminal in any one to refuse) and he is liable to the severer fine for any neglect of this kind. 2 Haw. c. 13. § 7.

He may detain affrayers till they find sureties of the peace. 2 Haw. c. 13. § 8.

He must convey his prisoner with all convenient speed either to the common gaol, or before a Magistrate. 1 H. H. 589. 2 Haw. c. 13. § 7.

Of Grand Juries.

It is sufficient to state generally, that they ought to take cognizance of all the offences above enumerated and described, and to accuse the offenders; and this duty extends not only to those offences which some prosecutor brings before them in the shape of indictments, but also to those
which

which have happened within their own knowledge or observation, and are not taken up by any prosecutor. The first mode of accusation is called an indictment, the other a presentment. 4 Bl. Com. 301, 302.

Justices of the Peace, and Sheriffs.

The duty of Justices of the Peace consists in three things.

1. In preventing the breach of the peace, by taking surety for the keeping of it, or for the good behaviour of the offenders, as the case shall require.
2. In pacifying such as are breaking the peace.
3. In punishing such as have broken it. Dalt. c. 3.

§ 3. With regard to the first of these, it is their duty when offenders are brought before them, charged with having actually broken the peace, or with some offence which has a manifest tendency to the breach of it; or when such offences are committed within their own view, to send the offenders to prison, in order that they may be forthcoming to take their trial—

Which, for all the offences above particularized, may be either at the assizes or the sessions; for Justices of Peace may, by virtue of their commission, take cognizance, and punish *evil words*, for they tend to a breach of the peace. Dalt. c. 114. 2 Haw. c. 8. § 8.

Upon commitment for such offences as are bailable, it is to be observed, that a considerable time generally intervenes between the charge and the trial. In order therefore to secure the public during this interval, from being exposed to the repetition of similar offences, it is the duty of

of the magistrate to require surety of the peace, or good behaviour, before he sets the offender at liberty.

As to those offences which are not actual breaches of the peace, but only have a tendency thereto, it is unnecessary to examine whether they afford sufficient grounds for demanding (*R. v. Willes*, 11 State Trials) *sureties of the peace*, because such offences do afford sufficient cause for requiring *sureties of good behaviour*; and sureties of good behaviour, are a greater protection to the public peace, than the other. 4 Inst. 181. *K. v. Langley*. 2 Ld. Raym. 1030. Dalt. c. 124. § 2.

2. As to the second branch of the Justices' duty, in pacifying such as are breaking the peace,—It is necessary that all Justices, Sheriffs, and Under-Sheriffs, should pay particular attention to the statute of the 13 H. 4. c. 7. as in addition to the duties which the common law imposes upon them, the neglect of which it punishes by Imprisonment and fine; that statute, commands their exertions in case of actual disturbance of the public peace, under considerable penalties.

By that statute, the two Justices of Peace who dwell nearest in the county where any Riot, Assembly, or Rout of People, shall be against the law, together with the Sheriff or Under-Sheriff of the county, upon complaint or other notice of the Riot, shall go to the place where the Riot shall be, under pain of 100*l.* each—

Shall take the power of the county, if need be, to suppress it—

Shall arrest, or cause to be arrested, all such offenders as they find there present, and shall remove the force, by committing to prison all the Rioters, together with such as are in company with them, and taking away their weapons. Dalt. c. 82. § 10, 12.

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In default of the two next Justices, the other Justices of the county, upon notice of the Riot, ought to execute this statute, upon danger of being fined. Dalt. c. 82. § 5.

If one of the two next Justices shall come, and not the Sheriff or Under-Sheriff, such Justices who come, shall be excused the forfeiture of 100*l.*; but yet if there comes but one Justice, he ought to arrest the Rioters, and commit or bind them over, otherwise he is fineable. Dalt. c. 82. § 7.

This right to raise the power of the county, or posse comitatus, is a right to demand assistance from all persons of all degrees (above the age of 15, and under 70), who must attend when reasonably warned, on pain of Imprisonment and Fine, and Ransom to the King. Dalt. c. 87*1.* c. 172. & c. 82. § 10. 2 Inst. 194.

Any single Justice of the Peace may call this power to suppress Rioters. Dalt. c. 172. § 1. 1 Haw. c. 65. § 18.

And it is referred to the discretion of the Justice, Sheriff, &c. what number they will have to attend on them, and how, and in what manner they shall be armed, or otherwise furnished. Dalt. c. 171.

The duties of the Magistrate, under the Riot Act, are sufficiently known, not to make it necessary to do more than to refer to it.

That Magistrates are punishable for not performing their duties in these respects, will be sufficiently ascertained, by referring to what happened after the great Riots in London, in the year 1780. The then Lord Mayor was indicted, and found guilty of having neglected his duty upon that occasion; but he died before judgment was pronounced against him.

I will conclude this head with these words from Foster, 270. where persons having authority to arrest or imprison,
using

using the proper means for that purpose, are resisted in so doing, and the party making resistance is killed in the struggle, this homicide is justifiable; and on the other hand, if the party having authority to arrest or imprison, using the proper means, happeneth to be killed, it will be murder in all who take a part in such resistance—

This rule applies to cases of resistance; for in cases of bare flight, in order to avoid an arrest, if the officer who pursues kills the offender, it is not justifiable, unless he pursues him where a felony has been committed, or a dangerous wound given; for in such case, if the offender cannot be otherwise overtaken, it would be deemed justifiable homicide. Foster, 271.

3. The third branch of the Justice's duty in punishing the offender, is best executed by first committing him for trial, and afterwards presiding upon such trial at the sessions.

I must add one word on the employment of the Military.—It is seen above, that the Magistrate is empowered and obliged to obtain assistance from all his Majesty's Subjects, and upon what occasions. The Military are part of his Subjects, and in that character they are bound to lend him their assistance; but there is no doubt that they may act without waiting for his commands, on the occasions, and in the manner in which other private Subjects and Citizens may act—vide therefore the chap. on Private Arrests. There is no doubt either where a felony is committing, the Magistrate is authorised in commanding them to fire upon the Felons, if that firing is necessary to prevent the completion of the offence, or securing the offender, always remembering however, that if the offenders can be secured without firing, that it is their duty to secure them without it.—Vide Extract from *Ld. Mansfield's Speech*, ante p. 10.

F I N I S.

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On the third day of the trial, the witness testified that the offender is not expected to be returning to the trial and otherwise providing any material as to the trial. I must also note on the report of the trial that it is not noted that the offender is not expected to be returning to the trial and otherwise providing any material as to the trial. I must also note on the report of the trial that it is not noted that the offender is not expected to be returning to the trial and otherwise providing any material as to the trial.

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